



## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 23

[Docket No. FWS–HQ–IA–2020–0019; FF09A30000-190FXIA16710900000]

RIN 1018–BF14

### Implementing the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Updates Following the Eighteenth Meeting of the Conference of the Parties (CoP18) to CITES

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Direct final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (FWS or Service), are taking direct final action to revise regulations that implement the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES or Treaty or Convention) by incorporating certain non-controversial provisions adopted at the sixteenth through eighteenth meetings of the Conference of the Parties (CoP16–CoP18) to CITES and clarifying and updating certain other provisions. These changes will bring U.S. regulations in line with certain revisions adopted at the three most recent meetings of the Conference of the Parties, which took place in March 2013 (CoP16), September–October 2016 (CoP17), and August 2019 (CoP18). The revised regulations will help us more effectively promote species conservation, help us continue to fulfill our responsibilities under the Treaty, and help those affected by CITES to understand how to conduct lawful international trade.

**DATES:** This rule is effective [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] without further action, unless we receive significant adverse comment that provides strong justifications as to why this rule should not be adopted or why it should be changed by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE

FEDERAL REGISTER]. The incorporation by reference of the material listed in this rule is approved by the Director of the *Federal Register* as of [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If we receive significant adverse information that provides strong justifications regarding why this rule should not be adopted or why it should be changed, we will publish a timely withdrawal of the rule in the *Federal Register* informing the public that the rule will not take effect, in whole or in part.

**ADDRESSES:** *Comment submission:* You may submit comments regarding this direct final rule by one of the following methods:

- Electronically using the Federal eRulemaking Portal: <http://www.regulations.gov> in Docket No. FWS–HQ–IA–2020–0019 (the docket number for this rulemaking).
- U.S. mail: Public Comments Processing, Attn: FWS–HQ–IA–2020–0019; U.S. Fish and Wildlife Service Headquarters, MS: JAO/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We will not accept e-mail or faxes. Comments and materials we receive, as well as supporting documentation, will be available for public inspection on <http://www.regulations.gov>.

*Supplementary materials:* For the CITES guidelines for the non-air transport of live wild animals and plants incorporated by reference (IBR) in this rule, contact CITES Secretariat, Palais des Nations, Avenue de la Paix 8–14, 1211 Genève 10, Switzerland; telephone +41–(0)22–917–81–39/40; email [info@cites.org](mailto:info@cites.org). You may find this CITES IBR material on the CITES Secretariat's website at <https://www.cites.org/eng/resources/transport/index.php> and on our website at <https://www.fws.gov/international/travel-and-trade/live-animal-transport.html>. For the *International Air Transport Association Live Animals Regulations* and the *International Air Transport Association Perishable Cargo Regulations* incorporated by reference, contact IATA, 800 Place Victoria, P.O. Box 113, Montreal, Canada H4Z 1M1; telephone 1–800–716–6326. Interested persons may purchase a copy of the IBR IATA publications at: <https://www.iata.org/publications>. To view this IBR material at the Division of Management

Authority office (see **FOR FURTHER INFORMATION CONTACT**), please email us regarding the current status of our office facility at: [managementauthority@fws.gov](mailto:managementauthority@fws.gov).

**FOR FURTHER INFORMATION CONTACT:** Pamela Hall Scruggs, Chief, Division of Management Authority, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: IA, Falls Church, VA 22041–3803; telephone 703–358–2095 or email: [managementauthority@fws.gov](mailto:managementauthority@fws.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

CITES was negotiated in 1973 in Washington, DC, at a conference attended by delegations from 80 countries. The United States ratified the Treaty on September 13, 1973, and it entered into force on July 1, 1975, after it had been ratified by 10 countries. Currently, 182 countries and the European Union (EU) have ratified, accepted, approved, or acceded to CITES; these countries and the EU (a regional economic integration organization) are known as Parties. On January 4, 2022, Andorra will become the 184th Party to CITES. The Convention is an international treaty designed to control and regulate international trade in certain animal and plant species that are now or may become threatened with extinction and may be affected by trade. These species are listed in Appendices to CITES, which are available on the CITES Secretariat's website at <http://www.cites.org/eng/app/index.php>. The Convention calls for regular biennial meetings of the Conference of the Parties (CoP), unless the Conference of the Parties decides otherwise. At these meetings, the Parties review the implementation of CITES, make provisions enabling the CITES Secretariat in Switzerland to carry out its functions, consider amendments to the lists of species in Appendices I and II, consider reports presented by the Secretariat and the permanent CITES committees (Standing, Animals, and Plants Committees), and make recommendations for the improved effectiveness of CITES. Any country that is a Party to CITES may propose amendments to Appendices I and II, resolutions, decisions, and other agenda items for consideration by all of the Parties at the meetings.

Section 8A of the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*) (ESA), designates the Secretary of the Interior as the U.S. Management Authority and U.S. Scientific Authority for CITES. Section 8A further states that the respective functions of these authorities shall be carried out through the U.S. Fish and Wildlife Service.

## **II. Previous Federal Actions**

The original U.S. regulations implementing CITES took effect on May 23, 1977 (42 FR 10462, February 22, 1977), after the first CoP was held. We have since updated the regulations several times. U.S. CITES regulations were most recently updated in May 2014 (79 FR 30400, May 27, 2014) and contain applicable provisions adopted at meetings of the Conference of the Parties up to and including the fifteenth meeting (CoP15), which took place in 2010.

## **III. This Rule**

As a Party to CITES, the United States has the responsibility under Article II(4) of the Treaty to ensure that all trade is consistent with the Treaty. To ensure that U.S. businesses and individuals understand the requirements for lawful international trade in CITES specimens, it is necessary for us to periodically update our CITES implementing regulations. With this direct final rule we are incorporating minor, noncontroversial updates to our regulations to reflect certain technical changes adopted by the CITES Parties during the sixteenth through eighteenth meetings of the Conference of the Parties to CITES (CoP16–CoP18) and clarifying and updating other provisions. The revisions in this direct final rule bring U.S. regulations in line with certain revisions adopted at these meetings of the Conference of the Parties, which took place in March 2013 (CoP16), September–October 2016 (CoP17), and August 2019 (CoP18). The revised regulations will help us more effectively promote species conservation, help us continue to fulfill our responsibilities under the Treaty, and help those affected by CITES understand how to conduct lawful international trade.

## **IV. Use of a Direct Final Rule**

An agency uses direct final rulemaking without prior proposal when it anticipates that a rule will be noncontroversial. Examples include minor substantive revisions to regulations and direct incorporations of mandates from new legislation. We are publishing this rule without a prior proposal because these changes are noncontroversial actions that, in the best interest of the regulated public, should be undertaken in as timely a manner as possible. The Parties agreed by consensus that these changes are appropriate for the conservation of the species and implementation of the Treaty. As previously noted, as a Party to CITES, the United States has the responsibility under Article II(4) of the Treaty to ensure that all trade is consistent with the Treaty, which includes aligning import, introduction from the sea, export, and re-export provisions as agreed by the Parties. Thus, we have good cause to find that standard notice and public comment procedures would be unnecessary and contrary to the public interest.

The rule will be effective, as published in this document, on the effective date specified above in **DATES**, unless we receive significant adverse comments on or before the comment due date specified in **DATES**. Significant adverse comments are comments that provide strong justifications as to why the rule should not be adopted or why it should be changed. If we receive significant adverse comments, we will publish a notice in the *Federal Register* withdrawing this rule before the effective date. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may withdraw only that provision, and otherwise adopt as final those provisions of the rule that are not the subject of an adverse comment.

In the event that we do receive significant adverse comments, we will engage in the normal rulemaking process to promulgate changes to 50 CFR part 23 as necessary. In addition, to address other necessary changes to our regulations as a result of the last three CoPs that are more complex than the provisions in this rulemaking document, we will soon publish a proposed rule for public comment.

## **V. Changes to 50 CFR Part 23**

*Section 23.5 How are the terms used in these regulations defined?*

Whenever possible we define terms using the wording of the Treaty and the Resolutions. In this direct final rule, we are amending § 23.5 to include a definition of the term “assisted production.” We are making this amendment together with our amendment of § 23.24 to add a new source code “Y” for assisted production plants. (See the preamble discussion for § 23.24.)

The new term “assisted production” was developed and adopted by the Parties for use with certain plant specimens that do not fall within the definition of “artificially propagated” and are not considered to be “wild” because they are propagated or planted in an environment with some level of human intervention for the purpose of plant production. The term is the result of extensive, substantive discussions at the direction of the Conference of the Parties that resulted in recommendations by the Plants Committee (PC24; Geneva, 2018) and the Standing Committee (SC70; Sochi, 2018), to amend Resolution Conf. 12.3, *Permits and certificates*, and Resolution Conf. 11.11, *Regulation of trade in plants*, to add the concept and definition of “assisted production” and its associated new source code “Y” for use on CITES documents. The United States was a member of the Plants Committee’s intersessional and in-session working groups on this topic and the in-session Standing Committee working group at SC70. The recommendations were developed as a result of the recognized need for an intermediate source code for international trade in plant specimens. These recommended changes to Resolution Conf. 12.3 and Resolution Conf. 11.11, to establish an intermediate source code for international trade in plant specimens that do not qualify as “artificially propagated” according to CITES but are also not wild specimens, were adopted by the Parties at CoP18 with support from the United States.

Under the newly revised Resolution Conf. 11.11 (Rev. CoP18), “assisted production” means plant specimens that do not fulfill the definition of “artificially propagated” and are considered not to be “wild” because they are propagated or planted in an environment with some level of human intervention for the purpose of plant production. We are implementing this definition with nonsubstantive changes for clarity and for consistency with language in our

current regulations. Material used to produce plant specimens from assisted production systems can be derived from plant material that is exempt from the provisions of the Convention, or derived from artificially propagated plants, or derived from plants grown in an environment with some level of human intervention, or derived from plant materials collected sustainably from wild populations in accordance with the provisions of CITES and relevant national laws and in a manner not detrimental to the survival of the species in the wild. Trade in assisted production plants (source code Y) will continue to require compliance with the provisions of Articles III, IV, and V of the Convention, the same as for trade in wild plants (source code W).

The Parties envisioned that Source Code Y could be used as an intermediate source code under a number of different scenarios to fill a gap in the previously available source codes. These scenarios include situations in which: (1) countries have developed plant production systems that clearly reduce pressure on wild-sourced plant material, but this development is not reflected if the Source Code W is used; (2) using Source Code W for plant material that comes from managed production systems reduces scientific accuracy and misrepresents the trade data; and (3) identifying the source of species harvested outside their natural range does not fit logically under Source Code W or Source Code A (for artificially propagated plants). As noted above, the Parties also confirmed that the new Source Code Y would continue to require compliance with the provisions of Articles III, IV, and V of the Convention, including the making of required non-detriment findings for Appendix-I and Appendix-II specimens and required legal acquisition findings for Appendix-I, Appendix-II, and Appendix-III specimens; therefore, ensuring that impact on the wild population and possible conservation concerns would be considered. The United States also believes that Source Code Y could be used in cases where the best available information demonstrates that the plants for export were not wild harvested, but the applicant cannot provide sufficient information to prove that the plants were artificially propagated, as is generally the case in a household move of personal plants purchased from a nursery or other retailer.

We are therefore amending our regulations to implement the new definition of “assisted production” adopted by the Parties together with our amendment of § 23.24 to add a new source code “Y” for assisted production plants. (See the preamble discussion for § 23.24.) This action fulfills the needs described above, as it will promote more effective implementation of CITES for plants, will more accurately reflect the range of sources from which CITES-listed plants are derived, and will help promote the conservation of CITES-listed plants.

*Section 23.6 What are the roles of the Management and Scientific Authorities?*

In this direct final rule, we amend the table in § 23.6, which lists the roles of the U.S. Management and Scientific Authorities, to reflect the revisions to Resolution Conf. 11.17 (Rev. CoP18), *National reports*, that were adopted at CoP16. The revised Resolution includes a new recommendation that the CITES biennial report, required under Article VIII, paragraph 7(b) of the Treaty, be submitted 1 year before each meeting of the Conference of the Parties, instead of every 2 years, and that the name of the report therefore be changed from “biennial report” to “report required under the provisions of Article VIII, paragraph 7(b).” We change “biennial reports” in § 23.6(g) to “periodic Article VIII, paragraph 7(b) reports” to reflect this new recommendation. This paragraph states that it is a role of the U.S. Management Authority to produce such reports.

*Section 23.7 What office do I contact for CITES information?*

This section contains contact information for offices involved in CITES implementation in the United States and for the CITES Secretariat. In this direct final rule we update the information in paragraph (f) regarding guidelines currently available on the Secretariat’s website for humane transport of CITES specimens. (See the preamble discussion for § 23.23.)

*Section 23.9 Incorporation by reference.*

In this direct final rule, we are finalizing regulatory text that includes incorporation by reference. We currently require that CITES export and re-export documents for live specimens contain a specific condition that the document is valid only if the transport complies with certain



humane-transport standards. At CoP14, the Parties agreed to promote the full and effective use of the International Air Transport Association (IATA) *Live Animals Regulations* (for animals) and *Perishable Cargo Regulations* (for plants) as the standards for the preparation and transport of live specimens. The IATA *Live Animals Regulations* (LAR), 40<sup>th</sup> edition, and *Perishable Cargo Regulations* (PCR), 13<sup>th</sup> edition, are incorporated by reference into our regulations at § 23.9. With this direct final rule, we update our regulations by incorporating by reference the 48<sup>th</sup> edition of the IATA LAR and the 21<sup>st</sup> edition of the PCR to replace the 40<sup>th</sup> and 13<sup>th</sup> editions, respectively, that are incorporated by reference in our current regulations.

At CoP16, the Parties adopted the CITES guidelines for the non-air transport of wild animals and plants, recognizing that the non-air transport of live specimens of certain species may require transport conditions in addition to or different from those in the IATA regulations (see the preamble discussion for § 23.23). In this direct final rule we incorporate by reference (in § 23.9) the CITES guidelines for the non-air transport of live wild animals and plants as the standard for the non-air transport of certain CITES-listed animals and plants.

In accordance with requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of the CITES guidelines for the non-air transport of live wild animals and plants, the 48<sup>th</sup> edition of the IATA *Live Animals Regulations* (LAR), and the 21<sup>st</sup> edition of the IATA *Perishable Cargo Regulations* (PCR). The LAR establishes regulations for air transportation of all animals including CITES-listed species. The IATA PCR establishes regulations for air transportation of perishable, including all plants and those species that are CITES-listed. The CITES guidelines for the non-air transport of live wild animals and plants establishes regulations for the non-air transport of CITES-listed animals and plants for those species that have methods different than, or in addition to, the methods prescribed by the LAR or PCR. The regulations and standards provided by these three references for the safe and humane transport of all animals and plants must be complied with for the legal international transport of all CITES-listed animals and plants. We update the references to humane transport requirements elsewhere in part 23 (§§ 23.7,

23.23, 23.26, and 23.56) to reflect these changes. Copies of the materials incorporated by reference normally may be inspected by appointment, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays, at: U.S. Fish and Wildlife Service Headquarters, Division of Management Authority, 5275 Leesburg Pike, Falls Church, VA 22041–3803; telephone 703–358–2095. However, the COVID-19 pandemic may affect when these materials are available for inspection. For information on the availability to view this material at the Division of Management Authority office, please email us regarding the current status of our office facility at: [managementauthority@fws.gov](mailto:managementauthority@fws.gov). You may find the CITES IBR material on the CITES Secretariat's website at <https://www.cites.org/eng/resources/transport/index.php> and on our website at <https://www.fws.gov/international/travel-and-trade/live-animal-transport.html>. Interested persons may purchase a copy of the IATA publications at: <https://www.iata.org/publications>.

*Section 23.23 What information is required on U.S. and foreign CITES documents?*

This section details information that must be included on CITES documents. To authorize export and re-export of living specimens, Articles III, IV, V, and VII of the Convention require the Management Authority to be satisfied the living specimens will be so prepared and shipped as to minimize the risk of injury, damage to health, or cruel treatment. Additionally, under Article VIII of the Convention, Parties are required to ensure that all living specimens, during any period of transit, holding, and shipment, are properly cared for so as to minimize the risk of injury, damage to health, or cruel treatment. To meet these obligations, we currently require that CITES export and re-export documents for live specimens contain a specific condition that the document is valid only if the transport complies with certain humane-transport standards and require that shipments containing live CITES specimens comply with these standards. At CoP14, the Parties agreed to promote the full and effective use of the International Air Transport Association (IATA) *Live Animals Regulations* (LAR) (for animals) and *Perishable Cargo Regulations* (PCR) (for plants) as the standards for the preparation and

transport of live specimens. These IATA documents are incorporated by reference into our regulations at § 23.9.

At CoP16, the Parties adopted the CITES guidelines for the non-air transport of wild animals and plants. These new guidelines were developed by a joint Animals Committee/Plants Committee working group (under Decision 15.59) recognizing that the non-air transport of live specimens of certain species may require transport conditions in addition to or different from those in the IATA regulations. The United States participated in the working group and supported the adoption of the guidelines at CoP16. With this direct final rule we incorporate by reference (in § 23.9) the CITES guidelines for the non-air transport of live wild animals and plants as the standard for the non-air transport of certain CITES-listed animals and plants. In addition, we update our regulations by incorporating by reference (in § 23.9) the 48th edition of the IATA LAR and the 21st edition of the IATA PCR to replace the 40th edition of the LAR and the 13th edition of the PCR that are incorporated by reference in our current regulations. We update the references to humane transport requirements elsewhere in part 23 (§§ 23.7, 23.26, and 23.56) to reflect these changes.

*§ 23.24 What code is used to show the source of the specimen?*

The Management Authority must indicate on CITES documents the source of the specimen being traded. The table in § 23.24 contains source codes agreed by the CITES Parties for use on CITES documents. At CoP16, the Parties agreed to a framework for application of the provisions in Articles III and IV of the Treaty for trade in specimens taken in the marine environment not under the jurisdiction of any country (Resolution Conf. 14.6 (Rev. CoP16), *Introduction from the sea*). At the same time, the Parties agreed to the use of source code “X” on CITES documents issued for such specimens, through the adoption of changes to Resolution Conf. 12.3 (Rev. CoP18) on *Permits and certificates*. With this direct final rule, we are adding source code “X” to the table in § 23.24 for specimens taken in the marine environment not under the jurisdiction of any country.

The Parties agreed, at CoP18, to adopt revisions to Resolution Conf. 11.11 (Rev. CoP18), *Regulation of trade in plants*, including addition of the term “assisted production” (see the discussion in the preamble for § 23.5 regarding the definition of “assisted production”) and to the use of source code “Y” on CITES documents for such specimens, through the adoption of changes to Resolution Conf. 12.3 (Rev. CoP18) on *Permits and certificates*. With this direct final rule, we add this new source code to the table in § 23.24 for assisted production plants.

*§ 23.26 When is a U.S. or foreign CITES document valid?*

With this direct final rule, we update the documents incorporated by reference into our regulations at § 23.23(c)(7) that provide guidance on humane transport of live specimens. (See the preamble discussion for § 23.23.) We update the entry on humane transport in the table at § 23.26 to reflect these changes.

*§ 23.56 What U.S. CITES document conditions do I need to follow?*

With this direct final rule, we update the documents incorporated by reference into our regulations at § 23.9 that provide guidance on humane transport of live specimens. (See the preamble discussions for §§ 23.9 and 23.23.) Therefore, we update the text at § 23.56(a)(2) regarding humane-transport conditions to reflect these changes.

## **VI. Public Comments**

We will not consider comments regarding this direct final rule sent by e-mail or fax or to an address not listed in **ADDRESSES**. If you submit a comment via <http://www.regulations.gov>, your entire comment, including any personal identifying information, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on <http://www.regulations.gov>.

## **VII. Required Determinations**

### *Clarity of the Rule*

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (1) Be logically organized;
- (2) Use the active voice to address readers directly;
- (3) Use clear language rather than jargon;
- (4) Be divided into short sections and sentences; and
- (5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

*National Environmental Policy Act (42 U.S.C. 4321 et seq.)*

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with this rule. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under NEPA is not required because the rule is covered by a categorical exclusion. This rule is a regulation that is of an administrative, legal, technical, or procedural nature, and its environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis under NEPA. The FWS has determined that this rule is categorically excluded from further NEPA review as provided by 516 DM 8 (Department of the Interior Manual, Series 31, Part 516, Chapter 8: *Managing the NEPA Process—U.S. Fish and Wildlife Service*) and 43 CFR 46.210(i). We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis

under NEPA.

*Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

Under the Regulatory Flexibility Act (RFA), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*) amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. We expect that the majority of the entities involved with international trade in CITES specimens would be considered small as defined by the SBA.

This rule would create no substantial fee or paperwork changes in the permitting process. The regulatory changes are not major in scope and would not change the modest financial or paperwork burden on the affected members of the general public currently approved under the Paperwork Reduction Act.

This rule would benefit businesses engaged in international trade by providing updated and clearer regulations for the international trade of CITES specimens. We do not expect these benefits to be significant under the RFA. The authority to enforce CITES requirements already exists under the ESA and is carried out by regulations contained in 50 CFR part 23. The requirements that must be met for import, introduction from the sea, export, and re-export of CITES species are based on the text of CITES, which has been in effect in the United States since 1975.

We therefore certify that this rule would not have a significant economic effect on a substantial number of small entities as defined under the RFA, and a regulatory flexibility analysis is not required.

*Small Business Regulatory Enforcement Fairness Act (SBREFA) (5 U.S.C. 801 et seq.)*

This rule is not a major rule under SBREFA. This rule:

(a) Will not have an annual effect on the economy of \$100 million or more. This rule provides the importing and exporting community in the United States with updated and more clearly written regulations implementing CITES. This rule will not have a negative effect on this part of the economy. It will affect import, introduction from the sea, export, and re-export of CITES specimens by any person equally, and the benefits of having updated guidance on complying with CITES requirements will be evenly spread among all businesses, whether large or small. There is not a disproportionate share of benefits for small or large businesses.

(b) Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, tribal, or local government agencies; or geographic regions.

(c) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rule will assist U.S. businesses and individuals traveling abroad in ensuring that they are meeting all current CITES requirements, thereby decreasing the possibility that shipments may be delayed or even seized in another country that has implemented CITES

resolutions not yet incorporated into U.S. regulations.

#### *Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2 (Department of the Interior Manual, Series 30, Part 512, Chapter 2: *Departmental Responsibilities for Indian Trust Resources*), we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have evaluated this rule under the criteria in Executive Order 13175 under the Department's consultation policy and have determined that it has no substantial direct effects on federally recognized Indian Tribes and that consultation under the Department's Tribal consultation policy is not required. Individual Tribal members must meet the same regulatory requirements as other individuals who trade internationally in CITES species.

#### *Regulatory Planning and Review (Executive Orders 12866 and 13563)*

Executive Order 12866 provides that the Office of Management and Budget (OMB) will review all significant rules. OMB has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive order directs agencies to consider regulatory approaches that reduce burdens and



maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

*Energy Supply, Distribution, or Use—Executive Order 13211*

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare statements of energy effects when undertaking certain actions. This rule revises the current regulations in 50 CFR part 23 that implement CITES. The regulations provide procedures to assist individuals and businesses that import, introduce from the sea, export, and re-export CITES wildlife and plants, and their parts, products, and derivatives, to meet international requirements. This rule does not significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

*Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both Federal intergovernmental mandates and Federal private sector mandates. These terms are defined in 2 U.S.C. 658(5)–(7).

“Federal intergovernmental mandate” includes a regulation that would impose an enforceable duty upon State, local, or Tribal governments with two exceptions. It excludes a condition of Federal assistance. It also excludes a duty arising from participation in a voluntary Federal program, unless the regulation relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and Tribal governments under

entitlement authority, if the provision would increase the stringency of conditions of assistance or place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding, and the State, local, or Tribal governments lack authority to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program."

(2) The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. As the lead agency for implementing CITES in the United States, we are responsible for monitoring international trade in CITES wildlife and plants, including their parts, products, and derivatives, and issuing documents under CITES to authorize international trade in CITES wildlife and plants. The structure of the program imposes no unfunded mandates; this rule imposes no obligations on State, local, or Tribal governments. Therefore, a Small Government Agency Plan is not required.

#### *Takings—Executive Order 12630*

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of this rule.

This rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630. The rule would not further restrict the import, export, or re-export of CITES specimens. Rather, this rule updates and clarifies the regulations for the import, export, and re-export of CITES specimens, which will assist the importing and

exporting community in conducting international trade in CITES specimens. A takings implication assessment is not required.

*Federalism—Executive Order 13132*

In accordance with E.O. 13132 (federalism), this rule does not have significant federalism effects. A federalism summary impact statement is not required. These revisions to 50 CFR part 23 do not contain significant federalism implications.

*Civil Justice Reform—Executive Order 12988*

In accordance with Executive Order 12988 (Civil Justice Reform), this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. Specifically, this rule:

- (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

*Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)*

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**List of Subjects in 50 CFR Part 23**

Animals, Endangered and threatened species, Exports, Fish, Foreign trade, Imports, Incorporation by reference, Plants, Transportation, Treaties, Wildlife.

**Regulation Promulgation**

Therefore, for the reasons discussed in the preamble, we hereby amend part 23 of title 50,

Code of Federal Regulations, as set forth below.

## **PART 23—CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA (CITES)**

1. The authority citation for part 23 continues to read as follows:

AUTHORITY: Convention on International Trade in Endangered Species of Wild Fauna and Flora (March 3, 1973), 27 U.S.T. 1087; and Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

2. Amend § 23.5 by adding, in alphabetical order, a definition of “assisted production” to read as follows:

### **§ 23.5 How are the terms used in these regulations defined?**

\* \* \* \* \*

*Assisted production* means a plant specimen that does not fall within the definition of “artificially propagated” and the source of the specimen is considered not to be taken from the wild because it was propagated or planted in an environment with some level of human intervention for the purpose of plant production.

\* \* \* \* \*

### **§ 23.6 [Amended]**

3. Amend § 23.6 by removing the word “biennial” in paragraph (g) and adding in its place the words “periodic Article VIII, paragraph 7(b)”.

### **§ 23.7 [Amended]**

4. Amend § 23.7(f)(2) by removing the words “*CITES’ Guidelines for transport and preparation for shipment of live wild animals and plants*” and adding in their place the words “*CITES Guidelines for the non-air transport of live wild animals and plants*”.

5. Revise § 23.9 to read as follows:

### **§ 23.9 Incorporation by reference.**

Certain material is incorporated by reference into this part with the approval of the Director

of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at U.S. Fish and Wildlife Service, International Affairs, Division of Management Authority, 703-358-2104 and is available from the sources listed elsewhere in this section. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email [fr.inspection@nara.gov](mailto:fr.inspection@nara.gov) or go to [www.archives.gov/federal-register/cfr/ibr-locations.html](http://www.archives.gov/federal-register/cfr/ibr-locations.html).

(a) International Air Transport Association (IATA), 800 Place Victoria, P.O. Box 113, Montreal, Quebec, Canada H4Z 1M1, 1-800-716-6326, [www.iata.org](http://www.iata.org).

(1) *Live Animals Regulations (LAR)* 48<sup>th</sup> edition, effective January 1, 2022, into §§ 23.23, 23.26, and 23.56.

(2) *Perishable Cargo Regulations (PCR)* 21<sup>st</sup> edition, effective January 1, 2022, into §§ 23.23, 23.26, and 23.56.

(b) CITES Secretariat: Palais des Nations, Avenue de la Paix 8-14, 1211 Genève 10, Switzerland; telephone +41-(0)22-917-81-39/40; email [info@cites.org](mailto:info@cites.org), [www.cites.org](http://www.cites.org).

(1) *CITES Guidelines for the non-air transport of live wild animals and plants*, effective January 2, 2017, into §§ 23.23, 23.26, and 23.56, available for downloading at

(i) <https://cites.org/eng/resources/transport/index.php>

(ii) <https://www.fws.gov/international/travel-and-trade/live-animal-transport.html>

(2) [Reserved]

6. Amend § 23.23 by revising paragraph (c)(7) to read as follows:

**§ 23.23 What information is required on U.S. and foreign CITES documents?**

\* \* \* \* \*

(c) \* \* \*

| Required<br>information | Description |
|-------------------------|-------------|
| * * * * *               | * * *       |

|  |  |
|--|--|
| (7) Humane transport of live specimens | If the CITES document authorizes the export or re-export of live specimens, a statement that the document is valid only if the transport conditions comply with the <i>International Air Transport Association Live Animals Regulations</i> (for animals) (incorporated by reference, see § 23.9) or the <i>International Air Transport Association Perishable Cargo Regulations</i> (for plants) (incorporated by reference, see § 23.9) or, in the case of non-air transport of species that may require transport conditions in addition to or different from the <i>Live Animals Regulations</i> or the <i>Perishable Cargo Regulations</i> , the <i>CITES Guidelines for the non-air transport of wild animals and plants</i> (incorporated by reference, see § 23.9). A shipment containing live specimens must comply with the <i>International Air Transport Association Live Animals Regulations</i> (for animals) or the <i>International Air Transport Association Perishable Cargo Regulations</i> (for plants) or, in the case of non-air transport of species that may require transport conditions in addition to or different from the <i>Live Animals Regulations</i> or the <i>Perishable Cargo Regulations</i> , the <i>CITES Guidelines for the non-air transport of wild animals and plants</i> . |
| * * * * *                              | * * *  |

\* \* \* \* \*

7. Amend § 23.24 by adding paragraphs (j) and (k) to read as follows:

**§ 23.24 What code is used to show the source of the specimen?**

\* \* \* \* \*

| Source of specimen  | Code |
|---|------|
| * * * * *   |      |
| (j) <i>Specimens taken in the marine environment not under the jurisdiction of any country (see § 23.39).</i> | X    |
| (k) <i>Assisted production plant (see § 23.5).</i>  | Y    |

8. Amend § 23.26 by revising paragraph (c)(8) to read as follows:

**§ 23.26 When is a U.S. or foreign CITES document valid?**

\* \* \* \* \*

(c) \* \* \*

| Key phrase | Conditions for an acceptable CITES document |
|------------|---|
| * * * * *  | *   |

|                      |  |
|----------------------|--|
| (8) Humane transport | Live wildlife or plants were transported in compliance with the <i>International Air Transport Association Live Animals Regulations</i> (for animals) (incorporated by reference, see § 23.9) or the <i>International Air Transport Association Perishable Cargo Regulations</i> (for plants) (incorporated by reference, see § 23.9) or, in the case of non-air transport of species that may require transport conditions in addition to or different from the <i>Live Animals Regulations</i> or the <i>Perishable Cargo Regulations</i> , the <i>CITES Guidelines for the non-air transport of live wild animals and plants</i> (incorporated by reference, see § 23.9). |
| * * * * *            |  |

\* \* \* \* \*

9. Amend § 23.56 by revising paragraph (a)(2) to read as follows:

**§ 23.56 What U.S. CITES document conditions do I need to follow?**

(a) \* \* \*

(2) For export and re-export of live wildlife and plants, transport conditions must comply with the *International Air Transport Association Live Animals Regulations* (for animals) (incorporated by reference, see § 23.9) or the *International Air Transport Association Perishable Cargo Regulations* (for plants) (incorporated by reference, see § 23.9) or, in the case of non-air transport of species that may require transport conditions in addition to or different from the *Live Animals Regulations* or the *Perishable Cargo Regulations*, the *CITES Guidelines for the non-air transport of live wild animals and plants* (incorporated by reference, see § 23.9).

\* \* \* \* \*

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**Shannon A. Estenoz,**  
*Assistant Secretary for Fish and Wildlife and Parks*

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